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ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL

Stanley Williams
August 22, 1996
Page 4

or relationship. If there are additional items along these
lines that you would like us to address, please let us know.

Sincerely,

Kate Rubin
C. Renée Manes

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV - 6 2002

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

STANLEY WILLIAMS,

Petitioner-Appellant,

v.

JEANNE WOODFORD, Warden, California
State Prison at San Quentin,

Respondent-Appellee.

Nos. 99-99018, 00-99001

D.C. No. CV-89-00327-SVW

ORDER

Before: HUG, T.G. NELSON, and GOULD, Circuit Judges.

Appellant's motion for substitution of counsel, or in the alternative for appointment of independent counsel to determine if defendant was denied his statutory right to qualified counsel is DENIED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STANLEY WILLIAMS, JR.
Petitioner-Appellant

v.

JEANNE WOODFORD,
Warden of the California
State Prison at San Quentin,
Respondent-Appellee

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U. S. COURT OF APPEALS

NOV 08 2002
FILED 11-8-02
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DATE INITIAL

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
D.C. NO. CV 89-0327 SVW

CAPITAL CASE

**MOTION FOR SUBSTITUTION OF COUNSEL ON APPEAL; OR, IN THE
ALTERNATIVE, APPOINTMENT OF SECOND COUNSEL;
DECLARATION OF MARIA E. STRATTON;
EXHIBITS A AND B**

Maria E. Stratton
Federal Public Defender
C. Renée Manes
Deputy Federal Public Defender
321 East Second Street
Los Angeles, CA 90012
(213)894-6044

INTRODUCTION

Petitioner-Appellant Stanley Williams, Jr., through his counsel of record, hereby moves this court to substitute appointed counsel on appeal or, in the alternative, to appoint second counsel to evaluate Petitioner's claims of ineffective assistance of his current counsel, the Office of the Federal Public Defender. This motion is based on the files and records of the court, the attached memorandum of points and authorities, declaration, and Exhibits A and B.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

In 1981, after a trial by jury, Petitioner Stanley Williams, Jr., was convicted of the 1979 murders of four people and sentenced to death. Petitioner's conviction and sentence were affirmed on direct appeal. People v. Williams, 44 Cal. 3d 1127 (1988). In 1984, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court. The California Supreme Court ordered an evidentiary hearing on whether a jailhouse informant deliberately elicited incriminating statements from Petitioner in violation of Massiah v. United States, 377 U.S. 201 (1964), and United States v. Henry, 447 U.S. 264 (1980). After the hearing, the state court denied the petition, finding no violation. In re Williams, 44 Cal.3d 1127 (1988).

On January 9, 1989, Petitioner filed a second state habeas petition which was denied without explanation on January 18, 1989.

On January 23, 1989, Petitioner filed a federal habeas corpus petition. Respondent filed an answer on March 3, 1989. The petition was dismissed without prejudice for failure to exhaust state remedies. This order was later revised, directing Petitioner to return to state court for exhaustion and holding the federal proceedings in abeyance pending completion of state exhaustion proceedings. On September 1, 1989, Williams filed a third state habeas corpus petition containing the two claims that the federal court had found to be unexhausted. Both claims related to a jailhouse informant issue, the first a violation of Brady v. Maryland, 373 U.S. 83 (1963), and the second a violation of Henry/Massiah.¹ The state supreme court ordered a further evidentiary hearing on the Henry/Massiah claim, but denied a hearing on the Brady claim. The evidentiary hearing concluded in May 1992. On April 11, 1994, the California Supreme Court denied the third state habeas petition. In re Williams, 7 Cal. 4th 572 (1994).

¹ The Henry/Massiah violation had been the subject of the first state court evidentiary hearing. However, significant additional facts in support of the claims were discovered in 1989. Those facts eventually led to the appointment of a special Grand Jury to investigate the use of jail house informant testimony by the Los Angeles County District Attorney's office. It was those additional facts which materially strengthened the claim and necessitated further exhaustion of the claim.

Petitioner filed a fourth state habeas petition on April 15, 1994 which was denied on June 21, 1995, on the merits and "as untimely and procedurally barred," citing In re Clark, 5 Cal.4th 750 (1993).

After the state court denied relief, the proceedings returned to federal court. Petitioner's counsel filed a motion to withdraw in the district court. Petitioner's counsel had represented him throughout the lengthy state court proceedings and two evidentiary hearings. The court appointed new counsel on November 6, 1995. On November 13, 1995, Petitioner and new counsel filed an amended federal petition. On January 3, 1996, the district court allowed newly-appointed counsel to withdraw. At that time, the Federal Public Defender -- Petitioner's third federal counsel -- was appointed.

On March 4, 1996, the Office of the Federal Public Defender began operation of its capital habeas unit. Deputy Federal Public Defender (DFPD) Renée Manes of the unit was assigned as Petitioner's counsel. In April, 1996, DFPD Kate Rubin was assigned as second counsel to work with DFPD Manes on Petitioner's action.

In January, 1997, DFPD Rubin resigned her position and moved to Northern California. In February, 1997, DFPD Janice Bergmann began working with DFPD Manes part time on Petitioner's action. In March, 1997, DFPD Julie Taschetta joined

the Office and was assigned to work on Petitioner's case with DFPDs Manes and Bergmann.

In November, 1997, six months after joining the Office, DFPD Taschetta resigned. Six months after DFPD Taschetta left, DFPD Bergman resigned and moved out of state.

In December, 1997, DFPD Michael O'Connor joined the Office and was assigned to work on Petitioner's action. Ten months later, in August, 1998, DFPD O'Connor left his employment with the Office and moved to Ireland.

During these numerous changes in counsel, only one DFPD, Ms. Manes, remained constant as Petitioner's counsel. After the district court denied the writ and post-hearing motions, Petitioner filed a notice of appeal on January 22, 1999.² On November 15, 1999, Petitioner filed a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. That motion was denied on December 17, 1999, and Petitioner filed a timely notice of appeal.³ DFPD Monica Knox as Chief of the Office's Appellate Unit assisted DFPD Manes on the appeals.

² Amended notices of appeal were filed on February 22, 2000 and May 18, 1999, after the denial of post-trial motions. The first appeal was assigned Case Number 99-99018.

³ The second appeal was assigned Case Number 00-99001. The two appeals were consolidated for argument and opinion.

Outside counsel, Gail Weinheimer, associated with the FPD in the presentation of oral argument on appeal, and has associated with the FPD in the preparation of the Petition for Rehearing and Suggestion for Hearing En Banc which will be filed with this court.

In November, 2000, after the completion of all briefing on the two related appeals, Petitioner wrote the court of appeals, requesting that the court address his claims of ineffective assistance of his federal habeas counsel, namely the Office of the Federal Public Defender. On January 26, 2001, the court ordered the Federal Public Defender to respond to Petitioner's letter. On March 1, 2001, the Federal Public Defender filed a response seeking to be relieved as counsel, citing irreconcilable conflicts with Petitioner. This court denied the request.

On October 1, 2002, after the court filed its opinion affirming the denial of Petitioner's petition for writ of habeas corpus,⁴ Petitioner wrote to counsel and Chief Judge Schroeder, renewing his request for substitution of counsel. Petitioner noted irreconcilable conflicts with his federal habeas counsel, including the conflicts that he noted when he first addressed the issue in November of 2000. On October 17, 2002, Petitioner supplemented his letter requesting that the court appoint second

⁴ See Williams v. Woodford, _ F3d _, 2002 WL 31012121 (9th Cir., Sept. 10, 2002).

counsel to investigate his claims that his federal habeas corpus counsel, the Office of the Federal Public Defender, provided ineffective assistance of counsel to him.

This motion is now made on Petitioner's behalf to request substitution of counsel, or, in the alternative, to request appointment of second counsel to evaluate Petitioner's claims of ineffective assistance by his current counsel, the Office of the Federal Public Defender.

II. ARGUMENT

A. This Court Should Appoint Substitute Counsel Based on the Irreconcilable Conflict Between Petitioner and His Current Attorneys

Pursuant to 21 U.S.C. § 848(q), indigent individuals under sentence of death are entitled to appointment of counsel to assist them in pursuing federal habeas corpus relief and, if necessary, in seeking clemency from state court authorities. This statutory right to counsel logically should include the right to conflict free counsel. Cf. Schell v. Witek, 218 F.3d 1017, 1021 (9th Cir. 2000) (en banc) (denial without hearing of a motion to substitute appointed counsel based on allegations of an "irreconcilable conflict" implicates criminal defendant's Sixth Amendment right to counsel); Brown v. Craven, 424 F.2d 1166, 1170 (9th Cir. 1970) (to compel one charged with a grievous crime to undergo trial with the assistance of an attorney with whom he has an irreconcilable conflict is to deprive him of the effective assistance

of any counsel whatsoever). Even if counsel is competent, a serious breakdown in communication can result in an inadequate defense. United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2001).

Just as the Sixth Amendment requires the trial court to make an appropriate inquiry into a defendant's claims of irreconcilable conflict, the Sixth Amendment should compel the same inquiry with respect to appointment of counsel under 21 U.S.C. § 848(q). The inquiry is simply whether the conflict between the client and his counsel prevents effective assistance of counsel. Schell v. Witek, 218 F.3d at 1026.

In addition to the two letters of Petitioner to counsel and Chief Judge Schroeder, attached as Exhibits A and B, the Declaration of Maria E. Stratton, attached hereto, also set out facts establishing an irreconcilable conflict between Petitioner and counsel. As set out in the declaration, since October 9, 2002, Petitioner has refused to meet with counsel or communicate directly with counsel by telephone. While Petitioner appears to accept correspondence (letters have not been returned unopened to counsel), he does not initiate correspondence with the exception of the two letters attached as Exhibit A and B. Petitioner has stated unequivocally in Exhibits A and B that he will continue to refuse to cooperate with counsel. As late as October 22, 2002, he refused a visit from a representative of the Office of the

Federal Public Defender. He agreed to see the Federal Public Defender Maria Stratton only to discuss procedures for obtaining substitute counsel. When Ms. Stratton agreed to renew the substitution request on his behalf, Petitioner stated, through an intermediary, that the visit would not then be necessary.

Despite the affirmance of the denial of his petition for writ of habeas corpus, Petitioner has several more proceedings where he is entitled to the assistance of counsel under 21 U.S.C. § 848(q), including preparation of a petition for rehearing en banc in this court, a petition for writ of certiorari in the United States Supreme Court and, failing those, a petition for clemency to the Governor of the State of California. Each important phase, to be meaningful, requires the effective assistance of counsel. As things stand now, because of the breakdown in communication between Petitioner and counsel, Petitioner contends it is highly unlikely that current counsel can effectively assist him through the conclusion of the litigation and, if necessary, the clemency process, a chilling prospect in light of this court's frank acknowledgement in its opinion that Petitioner presents a compelling case for clemency.

The upcoming legal proceedings in his case are of critical importance to Petitioner because they are his only avenue of avoiding execution. Substitution of

expressly, found that current counsel was ineffective in prosecuting his habeas corpus action.

3. In its opinion affirming the denial of the petition, this court found that Petitioner's claim of a violation under Batson v. Kentucky, 486 U.S. 79 (1986), was not sufficient to justify a certificate of appealability, for reasons including the failure to allege a cognizable claim. 2002 WL 31012121, at *6-7. This, too, Petitioner contends is an implicit finding and concession by this court that current habeas counsel was ineffective.

4. Finally, in both letters attached hereto, Petitioner cites several instances in which he believes counsel said one thing and did another, all to the detriment of this case. Petitioner urges this court to acknowledge the legitimacy of the serious breach of trust which arose from these events. See Exhibits A and B.

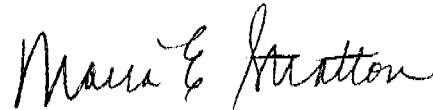
Appointment of second counsel would permit a conflict-free and fair evaluation of these issues and further the paramount goal of affording this capitally sentenced habeas petitioner the full panoply of rights guaranteed by the Sixth Amendment to criminal defendants and, by statutory extension via 21 U.S.C. § 848q, to federal habeas petitioners.

III. CONCLUSION

Petitioner respectfully requests substitution of conflict-free counsel or, in the alternative, second counsel to evaluate his claims of ineffective assistance.

Dated: November 5, 2002

Respectfully submitted,

A handwritten signature in cursive script, reading "Maria E. Stratton".

MARIA E. STRATTON
Federal Public Defender

DECLARATION OF MARIA E. STRATTON

I, Maria E. Stratton, declare and state as follows:

1. I am the Federal Public Defender for the Central District of California. I am counsel for Petitioner Stanley Williams in this action and all further proceedings, including clemency proceedings before the governor of the State of California. I have personal knowledge of all facts stated within this declaration, except those stated on information and belief.

2. On January 2, 1996, the district court appointed the Office of the Federal Public Defender as counsel for Petitioner in this action. We were Petitioner's third set of federal habeas counsel. The appointment was made in anticipation of the Office's newly formed capital habeas unit, scheduled to commence operation in March of that year.

3. On March 4, 1996, the capital habeas unit commenced operation. DFPD Renée Manes was assigned to represent Petitioner. DFPD Manes has remained constant as Petitioner's counsel in this action since 1996.

4. In accordance with the recommendations of 21 U.S.C. § 848(q), the policy of the Office has been to assign two attorneys to every case in the capital habeas unit. In accordance with that policy, I assigned DFPD Kate Rubin to represent Petitioner as well. Ms. Rubin was hired from a federal appellate clerkship where she

had worked on capital habeas matters for the court. In addition she had worked on the Terry Nichols defense team in the Oklahoma City bombing capital prosecution.

5. In January 1997 DFPD Rubin resigned her position with the Office to move to Northern California. In February, 1997, DFPD Janice Bergmann began working with DFPD Manes on Petitioner's action. DFPD Bergmann was, at the same time, also writing a "how to" manual on federal habeas corpus practice for the Administrative Office of the U.S. Courts, Defender Services Division. She had previously worked for the California Appellate Project, California's federally designated post-conviction defense organization, providing consultative assistance to counsel appointed to represent federal habeas corpus petitioners in the California federal courts. This case was the only one assigned to her in addition to her writing duties. DFPD Bergmann did not meet Petitioner during her tenure on his case and mainly assisted in preparing and reviewing written pleadings for the case.

6. In March, 1997, DFPD Julie Taschetta joined the Office and was assigned to work on Petitioner's case with DFPDs Manes and Bergmann. DFPD Taschetta came from the Federal Public Defender's Office in New Mexico where she had worked on non-capital habeas corpus actions.

7. In November, 1997, DFPD Taschetta left her employment after six months with the Office. In May, 1998, DFPD Bergmann left her employment with the Office to move out of state.

8. In December, 1997, DFPD Michael O'Connor joined the Office and was assigned to work on Petitioner's habeas action. DFPD O'Connor had prior capital habeas corpus experience through his work for the Arizona Death Penalty Resource Center and in private practice. Ten months later, in August, 1998, DFPD O'Connor left his employment with the Office to move to Ireland.

9. During these changes in counsel, only one DFPD, Ms. Manes, remained constant as Petitioner's counsel. DFPD O'Connor left the office shortly after the federal evidentiary hearing on this case. No DFPDs were assigned formally to assist Ms. Manes for the remainder of proceedings in the district court. After the district court denied the petition and post-hearing motions, DFPD Monica Knox, Chief of the Appeals Unit in the Office, assisted DFPD Manes in the appellate process.

10. In November, 2000, after the completion of all briefing on the two related appeals, Petitioner wrote the Court of Appeals requesting that the court address his claims of ineffective assistance of his federal habeas counsel. The letter was filed with the Ninth Circuit. On January 26, 2001, this court ordered the Office to file a response. The response was filed on March 1, 2001. The office concurred

that there were irreconcilable conflicts and a breakdown in communication between Petitioner and counsel. The court denied the request.

11. On October 1, 2002, after the court filed its opinion affirming the denial of Petitioner's petition for writ of habeas corpus, Petitioner wrote to me and sent a copy of the letter to Chief Judge Schroeder of this court. In the letter which is attached as Exhibit A, Petitioner noted irreconcilable conflicts with our Office, conflicts which had existed since Petitioner's first letter to the court two years earlier. On October 17, 2002, Petitioner sent another letter to me which he copied to Chief Judge Schroeder. The supplemental letter, attached as Exhibit B, requested as an alternative that second counsel be appointed to evaluate Petitioner's claims of ineffective assistance of counsel for the Office of the Federal Public Defender.

12. Since October 9, 2002, Petitioner has refused to meet with counsel or communicate by telephone directly with counsel. While Petitioner appears to accept correspondence (letters have not been returned unopened by counsel), he does not initiate correspondence with the exception of the two letters attached as Exhibits A and B. As late as October 22, 2002, he refused a visit from a representative of the Office of the Federal Public Defender. He agreed to see me only to discuss procedures for obtaining counsel. When I agreed to renew the substitution request

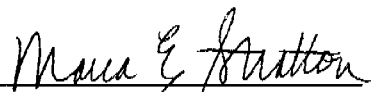
on his behalf, Petitioner stated, through an intermediary, that the visit would not then be necessary.

13. On November 5, 2002, I contacted opposing counsel, Deputy Attorney General Lisa Brault, to ascertain Respondent's position on this motion. Ms. Brault advised me that Respondent opposes the motion.

14. Petitioner is in custody at San Quentin State Prison. This motion is not made for purposes of delay or harassment, but to address Petitioner's concerns about the effectiveness of his current counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 5th day of November, 2002, at Los Angeles, California.



MARIA E. STRATTON
Federal Public Defender

CERTIFICATE OF SERVICE

I, the undersigned, resident and employee in Los Angeles County, California; that my business address is the Federal Public Defender's Office, 321 East 2nd Street, Los Angeles, California, 90012; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit, at whose direction the service by mail described herein was made to:

LISA BRAULT

Deputy Attorney General
State of California, Department of Justice
300 South Spring Street, Suite 500
Los Angeles, California 90013

A copy of: **Appellant's Motion to Substitute Appointed Counsel or, in the Alternative, to Appoint Second Counsel; Declaration of Maria E. Stratton; Exhibits A and B**

This certification is executed November 5, 2002, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



EMMA HERNANDEZ

Appendix A

Stanley Williams C#29300

San Quentin State Prison 4-EB-62

San Quentin, CA, 94974

Ms. Maria Stratton,

10-1-02-Tuesday

Indeed I find it paramount to extend this brief missive to remind you that the current devastating ruling from the Ninth Circuit clearly states culpability, at least in part, on work for which the Federal Public Defender's Office was responsible. Consequently it caused me to lose many critical issues(see the entire Ninth Circuit Court opinion by Judge Hug) that GOD FORBID may result in my execution.

a) Foremost I'm aware of the meeting held at the F.P.D.O(Federal Public Defender's Office) on thursday(10-10-02) with attorney Ms. Gail Weinheimer. During the meeting you agreed to notify the Ninth Circuit Court to remove the F.P.D.O based on the fact that the trust between me(the client) and the F.P.D.O has been irreconcilable.

b) Therefore I find it necessary Ms. Stratton to once again take you up on that offer.

c) I entreat of you Ms. Stratton to forward me a copy of the document that you plan to submit to the Ninth Circuit in re the F.P.D.O removal from this appeal case. Quite naturally you can understand the need to send the document to the Ninth Circuit Court" as quickly as possible to afford me an [innocent] man the best possible chance of securing professional legal representation and therefore receiving justice.

d) Admittedly, I do appreciate the willingness to remove yourself from this appeal. Nevertheless I am highly disappointed that you & your

F.P.D.O are only prepared to admit to the irreparable breach of trust between [me] and your office, when there are so many issues that have fed the mistrust that you are not willing to acknowledge.

e) To outset comment on the recent meeting(9-25-02-Wednesday) held in the F.P.D.O with Ms. Becnel and a cast of F.P.D.O attorneys/investigator(Bill Lazarow, Margo Rocconi, Dean R. Gits, Debra Garvey, Monica Knox, and Renee Manes). During the conference there was a developing unethical & offensive strategy suggesting that if it came down to a possible "Clemency Hearing" I should express contrition. Notabene Ms. Stratton; "I AM INNOCENCE DESPITE ANY PRECONCEIVED NOTIONS OF CULPABILITY THAT THE F.P.D.O/Ms. Manes MAY HARBOR. I WILL NEVER EVER ADMIT TO [ANY] CRIMES I DID NOT COMMIT NOR WILL I EVER SIGN A DOCUMENT OF SUCH AN AGREEMENT...NOT EVEN TO SAVE MY LIFE!

f) Throughout the years my numerous requests for the immediate rectification of the illogical legal strategies reflective in each submitted appeal writ were refused by attorney Renee Manes. As a result the spurious/tenuous defensive issues were readily contested by the Attorney General's office and the Ninth Circuit Court. Surprisingly in the meeting(9-25-02-Wednesday) Renee Manes stated aboveboard that the legal strategy in this appeal was absurd from the beginning with Bert Deixler and with C.A.P(California Appellate Project). Must I suffer for the negligence of others?

g) Imparted to me on several occasions attorney Renee Manes mentioned that due to the F.P.D.O lack of funds there would be fewer legal visits, and no more attorneys assigned to fight my appeal. Ms. Manes stated that you, Ms. Stratton, were unwilling to shell out the money, time, nor the male/female power for investigations. As a result the third

seed attorney(Renee Manes) became the [lead] representative of my appeal. My facing possible execution depicts her inexperience...need I say more!

h) The submittal of a sloppy "Forty Two" page brief(Reply Brief For Appellant) consisting of [127] typos by attorney Renee Manes obviously delineates carelessness, burnout, and apathy for this particular appeal. In one of your prior epistles (dated 11-29-00) Ms. Stratton, you clearly expressed that "The typos disturbed you too!

i) Allow me to recapitulate what I had explained in a previous missive(dated 11-0-6-00-Monday) mailed to you, Ms. Stratton, about the atypical succession of attorneys from your F.P.D.O:

1) Attorney Kate Rubin resigned due to an illness after less than a year, without ever notifying me(her client) or my family. In fact albeit Ms. Rubin switched to another law firm I found out [months] later that she had resigned from this appeal through word of mouth and afterwards from your office.

2) Attorney Julie Trachetti resigned less than "six months" after her appointment. However during the final visit Ms. Trachetti did have the decency to apprise me visavis that her resignation was due to her inability to handle this case and that it was too much! Moreover Ms. Trachetti was the [ONLY] attorney to admit that I was correct about her or anyone else from the F.P.D.O not being experienced enough to represent me in this appeal.

3) Attorney Janice Bergman(the most mysterious attorney) was assigned to this appeal. Unfortunately Ms. Bergman had never contacted me nor after repeated requests to attorneys Renee Manes/Julie Trachetti was I ever provided with information to contact her.

4) Attorney Michael O'Connor after being appointed resigned months later

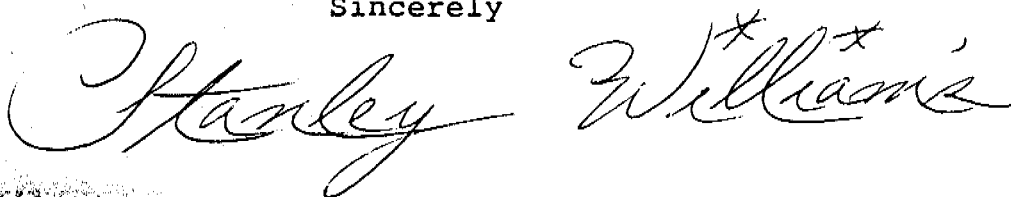
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to pursue a "9 month" program in Ireland. Apparently prior to representing me Mr. O'Connor knew beforehand that his departure was imminent, yet, he chose to withhold that information from me. I had no knowledge about Mr. O'Connor's planned exodus, I was duped.

5) Unequivocally Ms. Stratton I strongly believe this appeal has been sabotaged, be it due to malicious intent or by virtue of outright ineptitude. Whether admitted or not I'm convinced that in your heart you know that an injustice has been perpetrated across the board in my appeal. I pray in earnest that you, Ms. Stratton, and or attorney Renee Manes will do what is legally ethical to rectify this matter at hand!

6) Once again I entreat that you, Ms. Stratton, take attorney Renee Manes off this appeal to eschew any further detriment to my life. In addition I request that you file the necessary document for me to receive substitute representation outside the F.P.D.O. Thank you!

Sincerely

A handwritten signature in cursive script that reads "Stanley Williams". The signature is written in dark ink and is positioned below the word "Sincerely".

Stanley Williams

CC: Mary Schroder, Chief Judge Of The U.S Court Of Appeals For The Ninth Circuit.

Appendix B

Stanley Williams C#29300
San Quentin State Prison 4-EB-62
San Quentin, CA, 94974

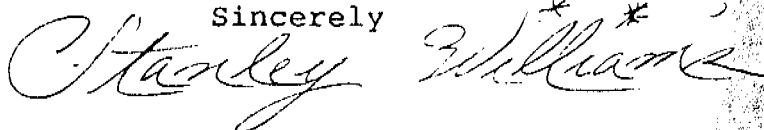
Ms. Maria Stratton,

10-17-02 Thursday

In short this is a brief supplement to the previous epistle I mailed to you on October 2, 2002. By no means was my prior missive an attempt to disrupt the deadline for the petition. However, I am insisting that you, Ms. Stratton, succinctly include in the petition (without omitting other germane issues) a request of the Ninth Circuit Court to assign an independent counsel to evaluate my claims of ineffectiveness of the F.P.D.O. (Federal Public Defender Office). Moreover mention that the F.P.D.O. attorneys (Kate Rubin & Renee Manes) breached our documented attorney/client [written] agreement that I actively participate in the composing/suggestions for [all] petitions filed on my behalf! Notabene under advisement of other legal entities you, Ms. Stratton, are ethically obligated to honor your client's reasonable requests. This is requisite because it is highly unlikely and amoral for the F.P.D.O. to investigate itself with parity.

Therefore, if at all possible I entreat of you, Ms. Stratton, and the F.P.D.O. to not use my dissatisfaction to hinder the submittal of the due petition to the Ninth Circuit Court with all of the essential issues, including the aforementioned ones in this letter. Indeed your cooperation will be appreciated to the utmost! Thank you!!

Sincerely

A handwritten signature in cursive script that reads "Stanley Williams". The signature is written in dark ink and is positioned above the printed name.

Stanley Williams

CC: Mary Schroder, Chief Justice Of The U.S Court of Appeals For The Ninth Circuit.

ORIGINAL

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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NOV 14 2002

FILED 11-14-02
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DATE INITIAL

STANLEY T. WILLIAMS,

Petitioner-Appellant,

v.

**JEANNE WOODFORD, Warden of
California State Prison at San Quentin,**

Respondent-Appellee.

CAPITAL CASE

On Appeal from the United States District Court
for the Central District of California

No. CV-89-0327-SVW

The Honorable Stephen V. Wilson, Judge

**RESPONDENT'S OBJECTION TO APPELLANT'S COUNSEL'S
NOVEMBER 5, 2002 MOTION RE SUBSTITUTION OF COUNSEL OR
IN THE ALTERNATIVE, APPOINTMENT OF SECOND COUNSEL**

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99-99018 & 00-99001

IN THE UNITED STATES COURT OF APPEALS

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STANLEY T. WILLIAMS,

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CAPITAL CASE

INTRODUCTION

Respondent-Appellee ("Respondent"), by and through her counsel of record, hereby objects to Petitioner-Appellant's ("Petitioner") November 5, 2002, motion, in which counsel requests this Court to substitute appointed counsel on appeal or, in the alternative, to appoint second counsel to evaluate Petitioner's claims of ineffective assistance of his current counsel, the Federal Public Defender ("Motion"). For the reasons set forth below, Petitioner's motion should be denied.

A decision by a three-judge panel of this Court was rendered on September 10, 2002, affirming the district court's denial of Petitioner's habeas

corpus petition and vacating the district court's denial of Petitioner's motion made pursuant to Federal Rules of Civil Procedure Rule 60(b).

On October 24, 2002, Petitioner filed with this Court a pro se Motion for Substitution of Counsel or, in the Alternative, for Appointment of Independent Counsel. On November 6, 2002, this Court summarily denied the Motion.

On November 6, 2002, Petitioner filed a Motion to File an Oversized Petition for Rehearing with Suggestion for Rehearing En Banc, and, at the same time, lodged the oversized Petition for Rehearing. On that same date, Petitioner filed an Application for Issuance of Additional Certificate of Appealability.

On November 8, 2002, Petitioner's counsel filed a Motion for Substitution of Counsel on Appeal Or, in the Alternative, Appointment of Second Counsel. Respondent hereby objects and asks that this Court to deny the request.

ARGUMENT

Petitioner's counsel has once again asked to be relieved as counsel on appeal. This is the third such request made by Petitioner or his attorneys in this Court.

In February 2001, counsel made a similar request on behalf of her client. In that request, counsel claimed there was an "irreparable breakdown in the relationship between counsel and Mr. Williams," and asked that alternate counsel be appointed. Petitioner's February 27, 2001, Response ("Response") at 1-2. Specifically, counsel asked that attorney Gail Weinheimer be appointed to represent Petitioner. *Id.*

In response, Respondent argued that petitioner, or his counsel, must give legitimate, case-specific reasons for substitution (*McKee v. Harris*, 649 F.2d 927, 932 (2nd Cir. 1981); *U.S. v. Allen*, 789 F.2d 90, 93 (1st Cir. 1986); *U.S. v. Soto-Hernandez*, 849 F.2d 1325, 1328 (10th Cir. 1988)), and that it is not enough for petitioner or his counsel to baldly assert there is "an irreparable breakdown of the attorney-client relationship." Respondent's Response to Appellant's Counsel's February 27, 2001, Filing Re Substitution of Counsel ("Opposition") at 3. Respondent pointed out that counsel for Petitioner had not provided any specific reasons warranting substitution of counsel. *Id.* In fact, the only substantive complaint appeared in a November 6, 2000, letter from Petitioner to Federal

Public Defender Maria Stratton, wherein Petitioner complained about the typographic errors in the Reply brief.

Respondent further emphasized that all of the briefing relating to the main appeal, as well as the appeal of the Rule 60(b) appeal, had been completed, and that the matter stood ready to be scheduled for oral argument. Opposition at 4-6. Accordingly, Respondent argued that Petitioner's request to substitute counsel could only be seen as a last-ditch effort to drag this case well into the twenty-first century. *Id.*

On April 3, 2001, the appellate commissioner of this Court denied Petitioner's request for substitute counsel, and promised Petitioner the Court would consider the merits of Petitioner's briefs regardless of the typographical errors. Despite the Court's denial, Petitioner nevertheless obtained the relief he sought when the Federal Public Defender associated with attorney Gail Weinheimer to assist on Petitioner's appeal; Ms. Weinheimer presented oral argument before this Court, and has assisted in the preparation of the Petition for Rehearing that has been lodged with this Court. Motion at 5.

Petitioner's most recent request for substitution of counsel is even less meritorious than his request over a year ago. As she did last year, Petitioner's counsel baldly asserts there is an "irreconcilable conflict" between Petitioner and his current attorneys. Similar to last year's Motion, counsel claims that Petitioner

will not meet, or communicate over the telephone, with counsel. Motion at 7-8. Without providing any more specific reasons for the substitution, counsel attaches as exhibits two letters from Petitioner to Federal Public Defender Maria Stratton, in which Petitioner expresses discontent at his counsel's apparently recent suggestion that "if it came down to a possible 'Clemency Hearing' [Petitioner] should express contrition." Motion at Exhibit A. Petitioner also continues to express his displeasure with deputy federal public defender C. Renee Manes and the "succession of attorneys from [the Federal Public Defenders Office]." *Id.*

Even at trial, mere dissatisfaction with counsel, lack of trust, strategic differences, and the mere assertion of a "conflict of interest" are not adequate grounds for the substitution of counsel. *See Jackson v. Ylst*, 921 F.2d 882, 888 (9th Cir. 1990); *United States v. Padilla*, 819 F.2d 952, 955-56 (10th Cir. 1987); *United States v. Gonzalez*, 800 F.3d 895, 899 (9th Cir. 1986); *United States v. Allen*, 789 F.2d 895, 899 (9th Cir. 1986); *McKee v. Harris*, 649 F.2d 927, 932 (2d Cir. 1981). *See also Shell v. Witek*, 218 F.3d 1017, 1024 (9th Cir. 2000). A fortiori, on habeas, the same, or higher, standard must be applied before new counsel is substituted.

A mere suggestion by counsel during a privileged conversation cannot form the basis for an irreconcilable conflict. Indeed, it is counsel's responsibility to apprise her client of all possible defense strategies. And, only Petitioner has the

power to admit to his crimes or to show contrition. More importantly, Petitioner's strategy and preparation for potential clemency proceedings are separate and distinct from his appeal.

In addition, counsel's claim of alleged conflict fails because, despite counsel's assertions to the contrary (Motion at 7-8), counsel is able to communicate with her client. Counsel represents that Petitioner accepts correspondence (Motion at 7), and, as is clear from Exhibits A and B, that Petitioner has initiated correspondence with her. Petitioner also appears to communicate through an intermediary. Motion at 16.

Moreover, current counsel's empty assertion of an "irreparable breakdown" is insufficient to disengage the entire Federal Public Defender's Office. Indeed, the Federal Public Defender, and C. Rene Manes in particular, has represented petitioner since January 3, 1996. During that time, petitioner has been vigorously represented. Petitioner's current attorney knows the intricacies of this complex case and is in the best position to represent Petitioner in this last leg of the twenty-three years of litigation. Her continued representation not only avoids delay, but serves petitioner's best interest.

Significantly, petitioner already has had **nine** attorneys while he has been in federal court. Petitioner started out with attorney Bert Diexler when he filed his first federal habeas corpus petition in the district court in 1989. Then, in

November of 1995, at petitioner's request, attorney Jerry Newton was appointed as substitute counsel. Less than two months later, due again to petitioner's dissatisfaction with his attorney, he requested, and was granted, substitute counsel; the Federal Public Defender was appointed to represent him. By petitioner's own account, he has had six attorneys from the Federal Public Defender's Office representing him: Maria E. Stratton, C. Renee Manes, Kate Rubin, Julie Trachetti, Janice Bergman and Michael O'Connor. Most recently, Gail Weinheimer has been added to Petitioner's team of attorneys. Petitioner's history suggests a pattern of displeasure with any attorney who represents him.

That being said, from Petitioner's own Motion to Substitute Counsel, it appears he is content with the representation rendered by attorney Gail Weinheimer. Ms. Weinheimer has associated with the Federal Public Defender's Office and has participated in oral argument and in writing the Petition for Rehearing and Suggestion for Rehearing En Banc. Motion at 5.

At this point, a decision has been rendered and Petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc has been lodged with this Court. With the exception of a possible Petition for Writ of Certiorari in the United States Supreme Court, there are no further proceedings left on appeal.

Substitution of counsel at this point can only be a patent attempt to delay.

Finally, Petitioner's counsel's alternate suggestion that another attorney

be appointed to evaluate Petitioner's claims of ineffective assistance of habeas counsel is devoid of merit. Constitutional ineffectiveness claims may only arise out of proceedings where there is a constitutional right to counsel. That right applies to a defendant's trial and his first appeal, and not state or federal collateral proceedings. *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (no right to counsel beyond first appeal as a matter of right); *Johnson v. Avery*, 393 U.S. 483, 488, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) (no right to counsel in state collateral proceedings); *see also Murray v. Giarratano*, 492 U.S. 1, 10, 109 S. Ct. 2765, 106 L. Ed. 2d 1 (1989) (no right to counsel in state capital collateral proceedings); *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). Because there is no constitutional right to effective counsel during habeas corpus proceedings, Petitioner's habeas counsel could not have been constitutionally ineffective as a matter of law. *See Harris v. Vasquez*, 949 F.2d 1497, 1513 & n. 13 (9th Cir. 1991). Consequently, Petitioner's counsel's alternate request for second counsel to evaluate claims of ineffective assistance of habeas counsel must be rejected.

CONCLUSION

As Petitioner's counsel has not articulated sufficient, legitimate reasons for substituting counsel at the eleventh hour of this appeal, and because he has no constitutional claim of ineffective assistance of habeas counsel, Petitioner's counsel's requests for new counsel or, in the alternative, for second counsel must be denied.

Dated: November 13, 2002.

Respectfully submitted,

BILL LOCKYER

Attorney General of the State of California

ROBERT R. ANDERSON

Chief Assistant Attorney General

PAMELA C. HAMANAKA

Senior Assistant Attorney General

CAROL F. JORSTAD

Deputy Attorney General



LISA J. BRAULT

Deputy Attorney General

Attorneys for Respondent-Appellee

LJB:mar
00002215-LA1999XF0003

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Stanley T. Williams v. Jeanne Woodford, Warden**
Case Nos.: **99-99018 & 00-99001**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **November 13, 2002**, I served the attached

RESPONDENT'S OBJECTION TO APPELLANT'S COUNSEL'S NOVEMBER 5, 2002 MOTION RE SUBSTITUTION OF COUNSEL OR IN THE ALTERNATIVE, APPOINTMENT OF SECOND COUNSEL

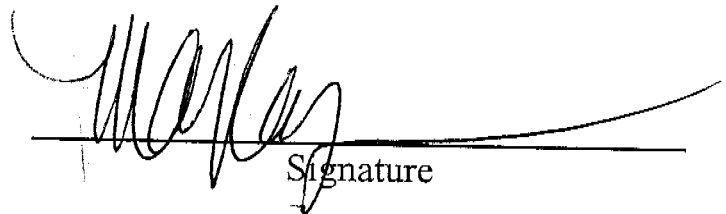
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Los Angeles, California 90013, addressed as follows:

C. Renee Manes, Esq.
Office of the Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 13, 2002**, at Los Angeles, California.

MARIA A. REYES

Declarant


Signature

LJB:mar
00002215-LA1999XF0003

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 22 2002

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

STANLEY WILLIAMS,

Petitioner - Appellant,

v.

JEANNE S. WOODFORD, Warden, of the
California State Prison, San Quentin,

Respondent - Appellee.

Case Nos. 99-99018
00-99001

D.C. No. CV-89-00327-SVW
Central District of California,
Los Angeles

ORDER

Before: HUG, T.G. NELSON, and GOULD, Circuit Judges.

Appellee shall file a response to appellant's petition for rehearing with suggestion for rehearing en banc and the brief of amici curiae in support, both received by this court on November 13, 2002. The response shall not exceed 30 pages and shall be filed within 21 days of the date of this order.

Appellant's motion for substitution of counsel on appeal is GRANTED.

Counsel will be appointed by separate order.

The Clerk shall serve a copy of this order by facsimile transmission on Maria E. Stratton, Federal Public Defender, 321 East Second Street, Los Angeles, California, 90012-4206 (FAX: 213.894.0081), who will locate appointed counsel. The district court shall provide this court with the name and address of appointed

counsel by facsimile transmission (FAX: 415.556.6228) within 14 days of locating
counsel.

No. 00-99001
Related Case No. 99-99018
D.C. No. CV 89-0327 SVW

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DEC 26 2002

FILED

DOCKETED

12/26/02

12/30/02

DATE

INITIAL

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STANLEY WILLIAMS, JR.

Petitioner-Appellant

v.

JEANNE WOODFORD

Respondent-Appellee

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**APPLICATION FOR EXTENSION OF TIME TO LOCATE SUBSTITUTE
APPOINTED COUNSEL AND REQUEST FOR 14 DAY STAY OF
APPELLANT'S PETITION FOR REHEARING; DECLARATION OF
MARIA E. STRATTON**

DEATH PENALTY

Maria E. Stratton, Ca. Bar No. 90986
Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012
(213) 894-6044

DECLARATION OF MARIA E. STRATTON

I, Maria E. Stratton, declare and state as follows:

1. I am the Federal Public Defender for the Central District of California and a member of the bar of this court. I am also the person designated by this court to assign counsel to appellants in the Central District of California who qualify for appointed counsel on appeal. Until this court's order of November 22, 2002, this office was counsel of record for appellant Stanley Williams. Currently pending before this court is Mr. Williams's petition for rehearing and suggestion for rehearing en banc.
2. On November 22, 2002, this court granted appellant's motion for substitute appointed counsel in this capital appeal and directed me to locate appointed counsel for Mr. Williams. Since receiving that order, I have been diligently searching, pursuant to 21 U.S.C. 848(q), for counsel learned in the law of capital defense and appeals. I have enlisted the assistance of Michael Lawrence of California's Habeas Corpus Resource Center and John Blume, Denise Young, and Mark Olive of the Habeas Assistance Project, resource counsel on contract with the Administrative Office of the U.S. Courts to assist nationwide in federal habeas corpus issues.
3. Although I maintain a list of appellate counsel, the task of locating counsel has been complicated by the fact that this is a capital appeal with a petition for rehearing pending. Most of the attorneys on the Central District appellate panel do not possess

the capital experience required for this matter or, if they do, are unavailable to take this assignment. In addition, on August 28, 2002, the government filed a ten-count RICO indictment in Los Angeles against 40 alleged members of the Aryan Brotherhood. *United States v. Barry Byron Mills, et al*, CR 02-938-GHK. Of the 40 charged defendants, 23 are death-eligible and are entitled to capital learned in the law of capital defense. Almost all of the defendants are currently incarcerated in federal and state institutions nationwide and are being transported into the district by the U.S. Marshal. The majority of the defendants have arrived in the last four weeks. The presiding judge of the *Mills* case, Honorable George H. King, has asked me, pursuant to 18 U.S.C. 3005, to recommend 23 capital "teams" of counsel for the death-eligible defendants in the *Mills* case. I have been putting together these teams as the defendants arrive in the district. The search for 23 capitally qualified attorneys to accept appointments as counsel in the *Mills* case has somewhat depleted the pool of local capitally qualified attorneys available to take the appointment on behalf of Mr. Williams in this matter.

4. Nevertheless, John Blume of the Habeas Assistance Project has identified a capitally-qualified attorney, Timothy Ford, who is a member of the bar of this court. Mr. Ford has advised us, however, that he needs a week to familiarize himself with the opinion of the court and the briefs of the parties before he can commit to the

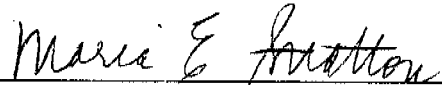
appointment, given his other clients.

5. For this reason, I request that the court permit me an additional 14 days, up to and through January 6, 2003, to locate counsel for Mr. Williams. In addition I request that the court stay its decision on Mr. Williams's currently filed petition for rehearing until new counsel is appointed and can undertake representing appellant.

6. On Monday, December 23, 2002, I telephoned Deputy Attorney General Lisa Brault to ascertain respondent's position on this request. Ms. Brault advised that respondent takes no position with respect to this request.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23th day of December, 2002, at Los Angeles, California.



MARIA E. STRATTON
Federal Public Defender

CERTIFICATE OF SERVICE

I, the undersigned, declare that I am a citizen of the United States and a resident and employee in Los Angeles County, California; that my business address is the Federal Public Defender's Office, 321 East 2nd Street, Los Angeles, California, 90012; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit, at whose direction the service bymail described herein was made to:

LISA BRAULT

Deputies Attorney General
State of California, Department of Justice
300 South Spring Street, Suite 500
Los Angeles, California 90013

A copy of: **Application for Extension of Time to Locate Substitute Appointed Counsel and Request for 14 day Stay of Appellant's Petition for Rehearing; Declaration of Maria E. Stratton**

This certification is executed December 23, 2002, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


EMMA HERNANDEZ

FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF CALIFORNIA
321 EAST 2nd STREET
LOS ANGELES, CALIFORNIA 90012-4202
213-894-2854
213-894-0081 FAX

MARIA E. STRATTON
Federal Public Defender
MARILYN E. BEDNARSKI
Chief Deputy

CRAIG WILKE
Directing Attorney
Santa Ana Office
OSWALD PARADA
Directing Attorney
Riverside Office

Direct Dial: (213) 894-6044

January 9, 2003

VIA FAX: 415-556-9721

Cathy A. Catterson
Clerk of Court
United States Court of Appeals
for the Ninth Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JAN 09 2003
FILED 1/9/03
DOCKETED 1/10/03
DATE INITIAL

Re: Stanley Williams v. Woodford, CA Nos. 99-99018 & 00-99001
Death Penalty Case

Dear Ms. Catterson:

By court order dated November 22, 2002, I was assigned to locate substitute counsel for petitioner Stanley Williams in this action. A copy of the order is attached. Attorney Andrea Asaro of the law firm of Rosen, Bien & Asaro has agreed to accept appointment as petitioner's counsel. It is my understanding (and I have communicated this to Ms. Asaro) that the appointment is for any further proceedings before this court and/or the United States Supreme Court. Enclosed is a copy of the CJA voucher I sent today to the district court for the clerk's signature, affirming this assignment.

I am writing to let the court know that Ms. Asaro was unfamiliar with the facts and legal issues of this case until she was contacted two weeks ago. She has diligently been reading the pleadings to get up to speed on this matter. As the court is aware, the pleadings are numerous and the issues complicated. Ms. Asaro has indicated to me that she would require 90 days to become completely conversant with the case to be able to respond to Respondent's opposition to Petitioner's pending petition for rehearing. I expect that upon appointment, she will be seeking such an extension from the court.

Cathy A. Carrerson
January 9, 2003
Page 2

To expedite the process of learning this case, Ms. Asaro has been consulting with this office and our associated counsel, Gail Weinheimer. Ms. Asaro would like to be able to continue to consult with Ms. Weinheimer and is concerned that Ms. Weinheimer be reimbursed for the time she spends acquainting Ms. Asaro with the facts and circumstances of the action. To that end, I expect that Ms. Asaro will request that the court appoint Ms. Weinheimer as an expert legal consultant on behalf of Petitioner. This office will, of course, continue to assist Ms. Asaro in every way possible, but the input and legal expertise of Ms. Weinheimer would be invaluable to Ms. Asaro in expeditiously litigating in this court on Petitioner's behalf.

If you or the court have any questions about this assignment of counsel, please do not hesitate to contact me at any time. Thank you very much.

Respectfully submitted,



MARIA E. STRATTON
Federal Public Defender

MES:ch

cc: Deputy Attorney General Lisa Brault

Declaration of Gail R. Weinheimer

I, Gail R. Weinheimer, do hereby state and declare as follows.

1. I am an attorney at law, duly admitted to practice before this Honorable Court. I was hired by the Office of the Federal Public Defender for the Central District of California to assist in representing capital habeas petitioner Stanley Williams ("Petitioner"). I was not hired in this matter until approximately May, 2001. Briefing was complete by this point.

2. When I was hired, I understood and agreed that the scope of my employment would be to assist with furthering Petitioner's efforts at securing relief premised upon the claims already before the courts. At no point was I given to understand that my role was to include review of the entire case file underlying this matter. At no point did I conduct a complete review of the case file. Instead, since Ms Manes remained primary counsel to Petitioner, I acted and worked in response to her requests and direction. She did not provide me the entire underlying file in the matter, but rather

* * * *